

LEGISLATURE OF NEBRASKA
NINETY-SIXTH LEGISLATURE
FIRST SESSION

LEGISLATIVE BILL 223

Introduced by Suttle, 10; Connealy, 16; Crosby, 29; Kiel, 9; Dw.
Pedersen, 39; C. Peterson, 35; Thompson, 14

Read first time January 11, 1999

Committee: Judiciary

A BILL

1 FOR AN ACT relating to children; to amend sections 43-272 and
2 43-272.01, Reissue Revised Statutes of Nebraska; to adopt
3 the Court Appointed Special Advocate Act; to change
4 provisions relating to guardians ad litem; to provide
5 duties; to harmonize provisions; and to repeal the
6 original sections.
7 Be it enacted by the people of the State of Nebraska,

1 Section 1. Sections 1 to 13 of this act shall be known
2 and may be cited as the Court Appointed Special Advocate Act.

3 Sec. 2. The Legislature finds that quality
4 representation for children requires both legal expertise and
5 thorough investigation and monitoring. Trained volunteers are a
6 valuable resource for children who are the subjects of child
7 protection cases or other matters in the legal system. Cooperation
8 between attorneys and volunteers can enhance the quality of
9 representation for children. The purposes of the Court Appointed
10 Special Advocate Act are to promote the exercise of responsible
11 citizenship by authorizing trained community volunteers to become
12 advocates for children and to enhance the community's response to
13 the needs of children in the legal system.

14 Sec. 3. For purposes of the Court Appointed Special
15 Advocate Act, juvenile court means the separate juvenile court,
16 where it has been established under sections 43-2,111 to 43-2,127,
17 or the county court sitting as a juvenile court in all other
18 counties.

19 Sec. 4. (1) A court appointed special advocate program
20 is a community-based organization which recruits, screens, trains,
21 and supervises volunteers to advocate for the best interests of
22 children who come into the juvenile courts primarily as a result of
23 abuse or neglect. Volunteers who are appointed by the court
24 through such programs are court appointed special advocates.

25 (2) Each juvenile court may be served by a court
26 appointed special advocate program. One program may serve more
27 than one juvenile court.

28 (3) A court appointed special advocate program shall be

1 certified by the Nebraska Court Appointed Special Advocate
2 Association and shall adhere to the standards and guidelines
3 established by the association and by the juvenile courts.

4 Sec. 5. (1) A court appointed special advocate volunteer
5 shall complete preservice training and shall be sworn in as an
6 officer of the court by a juvenile court judge before beginning
7 assignment to a case. The volunteer shall assume the rights and
8 responsibilities of an officer of the court and shall act
9 consistently with applicable court rules.

10 (2) The judge may appoint a volunteer for any child
11 alleged to be a juvenile as described in section 43-247, but
12 volunteers shall be appointed primarily for a child alleged to be a
13 juvenile as described in subdivision (3)(a) of section 43-247. At
14 the discretion of the judge, a volunteer may be a party of record
15 to the action. To appoint a volunteer, the juvenile court judge
16 shall sign an order of appointment which grants the volunteer the
17 authority to review all relevant documents and interview all
18 parties involved in the case, including parents and other parties
19 in interest, as well as others having significant information in
20 relation to the child.

21 (3) A volunteer may be assigned at any stage of the court
22 proceedings. The appointment of a volunteer ends at the discretion
23 of the judge or when the court's jurisdiction over the child
24 terminates.

25 Sec. 6. (1) Court appointed special advocate volunteers
26 shall be at least twenty-one years of age, have demonstrated an
27 interest in children and their welfare, and be willing to commit to
28 the juvenile court for a minimum of one year of service to a child.

1 Qualified adults shall not be discriminated against based upon
2 gender, socioeconomic, religious, racial, ethnic, or age factors.

3 (2) The court appointed special advocate program in each
4 jurisdiction shall enact regulations consistent with the Nebraska
5 Court Appointed Special Advocate Association standards and
6 guidelines governing qualifications of volunteers. Such
7 regulations shall include provisions that all volunteer applicants
8 complete an application, participate in a screening interview,
9 participate in training, and meet other qualifications as
10 determined by the association and the presiding judge of the
11 juvenile court.

12 Sec. 7. (1) As required background screening, the
13 program director shall obtain the following information regarding a
14 volunteer applicant:

15 (a) A check of the applicant's criminal history record
16 information maintained by the Identification Division of the
17 Federal Bureau of Investigation through the Nebraska State Patrol;

18 (b) A check of his or her record with the state Abused or
19 Neglected Child Registry;

20 (c) A check of his or her driving record; and

21 (d) At least three references who will attest to the
22 applicant's character, judgment, and suitability for the position
23 of a court appointed special advocate volunteer.

24 (2) If the applicant has lived in Nebraska for less than
25 twelve months, the program director shall obtain the records
26 required in subdivisions (1)(a) through (1)(c) of this section from
27 all other jurisdictions in which the applicant has lived during the
28 preceding year.

1 Sec. 8. All court appointed special advocate volunteers
2 shall participate in preservice training, including instruction on
3 the dynamics of child abuse and neglect, cultural awareness, child
4 development, the juvenile court process, permanency planning,
5 volunteer roles and responsibilities, advocacy, and information
6 gathering and documentation. Volunteers shall participate in
7 observation of juvenile court proceedings prior to appointment.
8 Each volunteer shall have a minimum of ten hours of inservice
9 training per year provided by the court appointed special advocate
10 program.

11 Sec. 9. (1) A court appointed special advocate volunteer
12 shall conduct an independent investigation regarding the best
13 interests of the child and shall provide factual information to the
14 court regarding the child which he or she is appointed to serve.
15 This investigation shall include interviews with and observations
16 of the child, interviews with other appropriate individuals, and a
17 review of relevant records and reports. The volunteer shall
18 determine if a permanent plan has been created for the child,
19 whether appropriate services are being provided to the child and
20 family, and whether the case plan is progressing in a timely
21 manner.

22 (2) The court appointed special advocate volunteer shall
23 formulate recommendations consistent with the best interests of the
24 child regarding placement, visitation, and appropriate services for
25 the child and family. The volunteer shall assure that the child's
26 best interests are being represented at every stage of the case and
27 shall prepare written reports of his or her recommendations which
28 shall be distributed pursuant to the court guidelines. The

1 volunteer shall monitor cases to which he or she is appointed to
2 assure that the child's needs are being met and that the terms of
3 the juvenile court's orders are fulfilled in an appropriate and
4 timely manner.

5 Sec. 10. (1) The court appointed special advocate
6 volunteer shall attend the court hearings and may be called as a
7 witness in the proceedings of a case to which he or she is
8 appointed by any party or by the court.

9 (2) A volunteer shall have no association which creates a
10 conflict of interest with duties as a court appointed special
11 advocate volunteer. The volunteer shall not (a) be related to any
12 party or attorney involved in a case, (b) be employed in a position
13 or with an agency where such employment might result in a conflict
14 of interest or give rise to the appearance of conflict, or (c) use
15 the position to seek or accept gifts or special privileges for
16 himself or herself or others.

17 Sec. 11. Any attorney or guardian ad litem and all state
18 and local government and community agencies shall cooperate with
19 the court appointed special advocate volunteer appointed to serve
20 on a case and shall cooperate with the court appointed special
21 advocate program to facilitate the implementation of the program.
22 In a case utilizing the services of both a volunteer and a guardian
23 ad litem, both the volunteer and the guardian ad litem shall
24 cooperate to represent the best interests of the child. The
25 volunteer shall be notified in a timely manner of hearings,
26 meetings, or other proceedings concerning the case to which he or
27 she is appointed.

28 Sec. 12. All information pertaining to the case and

1 obtained by the court appointed special advocate volunteer shall be
2 considered confidential. The volunteer shall not disclose to
3 persons other than the court or persons authorized by the court the
4 contents of any document, record, or other case-related information
5 which is discovered in the course of his or her investigation.

6 Sec. 13. The program directors, supervisors, staff, and
7 boards of directors of the court appointed special advocate
8 programs and the court appointed special advocate volunteers
9 participating in such programs are not civilly liable for acts or
10 omissions committed in connection with the duties which are part of
11 the program, except in cases of willful misconduct, gross
12 negligence, or bad faith.

13 Sec. 14. Section 43-272, Reissue Revised Statutes of
14 Nebraska, is amended to read:

15 43-272. (1) When any juvenile shall be brought without
16 counsel before a juvenile court, the court shall advise such
17 juvenile and his or her parent or guardian of their right to retain
18 counsel and shall inquire of such juvenile and his or her parent or
19 guardian as to whether they desire to retain counsel. The court
20 shall inform such juvenile and his or her parent or guardian of
21 such juvenile's right to counsel at county expense if none of them
22 is able to afford counsel. If the juvenile or his or her parent or
23 guardian desires to have counsel appointed for such juvenile, or
24 the parent or guardian of such juvenile cannot be located, and the
25 court ascertains that none of such persons are able to afford an
26 attorney, the court shall forthwith appoint an attorney to
27 represent such juvenile for all proceedings before the juvenile
28 court, except that if an attorney is appointed to represent such

1 juvenile and the court later determines that a parent of such
2 juvenile is able to afford an attorney, the court shall order such
3 parent or juvenile to pay for services of the attorney to be
4 collected in the same manner as provided by section 43-290. If the
5 parent willfully refuses to pay any such sum, the court may commit
6 him or her for contempt, and execution may issue at the request of
7 the appointed attorney or the county attorney or by the court
8 without a request.

9 (2) The court, on its own motion or upon application of a
10 party to the proceedings, shall appoint a guardian ad litem for the
11 juvenile: (a) If the juvenile has no parent or guardian of his or
12 her person or if the parent or guardian of the juvenile cannot be
13 located or cannot be brought before the court; (b) if the parent or
14 guardian of the juvenile is excused from participation in all or
15 any part of the proceedings; (c) if the parent is a juvenile or an
16 incompetent; (d) if the parent is indifferent to the interests of
17 the juvenile; or (e) in any proceeding ~~pursuant to the provisions~~
18 ~~of subdivision (3)(a) of section 43-247~~ enumerated in section
19 43-272.01.

20 A guardian ad litem shall have the duty to protect the
21 interests of the juvenile for whom he or she has been appointed
22 guardian, and shall be deemed a parent of the juvenile as to those
23 proceedings with respect to which his or her guardianship extends.

24 (3) The court may appoint a court appointed special
25 advocate volunteer for any juvenile before the court as provided in
26 the Court Appointed Special Advocate Act.

27 (4) Except in cases when there are special reasons why a
28 particular layperson would be the most appropriate guardian ad

1 litem for the juvenile, the court shall appoint: (a) An an attorney
2 as guardian ad litem, (b) a court appointed special advocate
3 volunteer as guardian ad litem, or (c) a guardian ad litem and a
4 court appointed special advocate volunteer for the juvenile. A
5 guardian ad litem who is an attorney shall act as his or her own
6 counsel and as counsel for the juvenile, unless there are special
7 reasons in a particular case why the guardian ad litem or the
8 juvenile or both should have counsel in addition to the guardian ad
9 litem. In such cases and in cases when the guardian ad litem or
10 court appointed special advocate volunteer appointed by the court
11 is not an attorney, the guardian ad litem or court appointed
12 special advocate volunteer shall have the right to counsel, except
13 that the guardian ad litem or court appointed special advocate
14 volunteer shall be entitled to appointed counsel without regard to
15 his or her financial ability to retain counsel. Whether such
16 appointed counsel shall be provided at the cost of the county shall
17 be determined as provided in subsection (1) of this section.

18 Sec. 15. Section 43-272.01, Reissue Revised Statutes of
19 Nebraska, is amended to read:

20 43-272.01. (1) A guardian ad litem as provided for in
21 ~~subsections (2) and (3) of~~ section 43-272 shall be appointed when a
22 child is removed from his or her surroundings pursuant to
23 subdivision (3) or (4) of section 43-248, subdivision (4) of
24 section 43-250, or section 43-251. If removal has not occurred, a
25 guardian ad litem shall be appointed at the commencement of all
26 cases brought under subdivision (3)(a) or (8) of section 43-247 and
27 section 28-707.

28 (2) In the course of discharging duties as guardian ad

1 litem, the person so appointed shall consider, but not be limited
2 to, the criteria provided in this subsection. The guardian ad
3 litem:

4 (a) Is appointed to stand in lieu of a parent for a
5 protected juvenile who is the subject of a juvenile court petition,
6 shall be present at all hearings before the court in such matter
7 unless expressly excused by the court, and may enter into such
8 stipulations and agreements concerning adjudication and disposition
9 deemed by him or her to be in the juvenile's best interests;

10 (b) Is not appointed to defend the parents or other
11 custodian of the protected juvenile but shall defend the legal and
12 social interests of such juvenile. Social interests shall be
13 defined generally as the usual and reasonable expectations of
14 society for the appropriate parental custody and protection and
15 quality of life for juveniles without regard to the socioeconomic
16 status of the parents or other custodians of the juvenile;

17 (c) May at any time after the filing of the petition move
18 the court of jurisdiction to provide medical or psychological
19 treatment or evaluation as set out in section 43-258. The guardian
20 ad litem shall have access to all reports resulting from any
21 examination ordered under section 43-258, and such reports shall be
22 used for evaluating the status of the protected juvenile;

23 (d) Shall make every reasonable effort to become familiar
24 with the needs of the protected juvenile which (i) shall include
25 consultation with the juvenile within two weeks after the
26 appointment and once every six months thereafter and inquiry of the
27 most current caseworker, foster parent, or other custodian and (ii)
28 may include inquiry of others directly involved with the juvenile

1 or who may have information or knowledge about the circumstances
2 which brought the juvenile court action or related cases and the
3 development of the juvenile, including biological parents,
4 physicians, psychologists, teachers, and clergy members;

5 (e) May present evidence and witnesses and cross-examine
6 witnesses at all evidentiary hearings;

7 (f) Shall be responsible for making recommendations to
8 the court regarding the temporary and permanent placement of the
9 protected juvenile and shall submit a written report to the court
10 at every dispositional or review hearing, or in the alternative,
11 the court may provide the guardian ad litem with a checklist that
12 shall be completed and presented to the court at every
13 dispositional or review hearing;

14 (g) Shall consider such other information as is warranted
15 by the nature and circumstances of a particular case; and

16 (h) May file a petition in the juvenile court on behalf
17 of the juvenile, including a supplemental petition as provided in
18 section 43-291.

19 (3) Nothing in this section shall operate to limit the
20 discretion of the juvenile court in protecting the best interests
21 of a juvenile who is the subject of a juvenile court petition.

22 (4) For purposes of subdivision (2)(d) of this section,
23 the court may order the expense of such consultation, if any, to be
24 paid by the county in which the juvenile court action is brought or
25 the court may, after notice and hearing, assess the cost of such
26 consultation, if any, in whole or in part to the parents of the
27 juvenile. The ability of the parents to pay and the amount of the
28 payment shall be determined by the court by appropriate

1 examination.

2 Sec. 16. Original sections 43-272 and 43-272.01, Reissue

3 Revised Statutes of Nebraska, are repealed.